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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,509	10/17/2001	David Thompson	BRDC:036	7211
29395	7590	02/22/2007		
H. DALE LANGLEY, JR. THE LAW FIRM OF H. DALE LANGLEY, JR. PC 610 WEST LYNN AUSTIN, TX 78703			EXAMINER TORRES, MARCOS L	
			ART UNIT	PAPER NUMBER
			2617	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/22/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

09/982,509

**Applicant(s)**

THOMPSON ET AL.

**Examiner**

Marcos L. Torres

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2006 and 21 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 73-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 73-78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-21-06</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Response to Arguments***

1. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2617.

2. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 12 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The above claim is directed to a computer program with no structural elements and no tangible output.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. programming code "software" connected to the first client device critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The above claim recites a

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programming code "software" connected to the first client device. Programming code normally is executed in a device, instead of connected to a device; it is unclear how an intangible code can be connected to a device. Also, applicant is advised that inclusion of intangible programming code can potentially raise 35 USC § 101 issues.

7. Claims 73 and 76 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The above claims recite the limitation "non-standard communication protocol", while the application have support for specialized protocols, however these terms are not analogous since a specialized protocol can be standard or non-standard protocol.

8. Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This claim recites the limitation of a communication network logical switch, however examiner cannot find support for the above limitation in the specification.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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10. Claims 73 and 76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. The term " specialized protocols " in claims 73 and 76 is a relative term, which renders the claim indefinite. The term " specialized protocols " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Also, the specification of the present application in page 7, lines 6-10 it define the term specialized protocol with non-limiting examples such as ... Moreover, the example given in the above section as a specialized protocol such as TCP/IP is a standard protocol in all internet connection. Thereby, any protocol could be a specialized protocol.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-3, 5-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Layson Jr. US005982281A.

As to claim 1, Layson, Jr. discloses a communications network (see fig. 1), comprising: a wireless link of the network (see fig.1, item 40); a server computer

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connected to the wireless link (see fig. 1, item 22); a first client device communicatively connected via the wireless link to the server computer, the first client device having a first location (see fig. 1, items 38,44); a second client device communicatively connected to the server computer, the second client device having a second location (see fig. 1, items 12,20); a first identifier ascertainable to the server computer corresponding to the first location; a second identifier ascertainable to the server computer corresponding to the second location; wherein the server computer selectively, based on the first location and the second location, intermediates communications between the first client device at the first location over the wireless link and the second client device at the second location (see col. 6, lines 30-31, 44-47; col. 16, lines 29-62).

As to claim 2, Layson Jr. discloses the communications network further comprising a detector for detecting a first location of the first client device and a second location of the second client device (see col. 6, lines 30-31, 44-47; col. 16, lines 29-62).

As to claim 3, Layson Jr. discloses the communications network wherein the detector is selected from the group consisting of: hardware of the server computer (see col. 6, lines 30-31, 44-47; col. 16, lines 29-62) hardware of the first client device (see col. 12, lines 26-55).

As to claim 5, Layson Jr. discloses the communications network wherein the wired network is the Internet (see col. 6, lines 1-3).

As to claim 6, Layson Jr. discloses the wireless communications network wherein the wireless link is a cellular packet data system (see col. 6, lines 3-6).

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As to claim 8, Layson Jr. discloses the wireless communications network further comprising database communicatively connected to the server computer for relating the first location to the first client device and the second location to the second client device and for determining whether to intermediate communication, via the server computer, between the first client device at the first location over the wireless link and the second client device at the second location (see col. 16, lines 29-62).

14. Claims 9-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Drutman US 6,618,593 B1.

As to claim 9, Drutman discloses a method of wireless communications, wherein a first client device has a first location and a second client device has a second location, comprising the steps of: deriving a first information relational to the first location and the first client device, if the first client device is communicatively connected to a communication network logical switch (central unit); deriving a second information relational to the second location and the second client device is communicatively connected to the communication network logical switch; intermediating communications, by virtue of the first information and the second information, between the first client device and the second client device, if the communication network logical switch favorably recognizes the first information and the first client device, on the one hand, and the second information and the second client device, on the other hand (see col. 4, lines 29-53).

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As to claim 10, Drutman discloses the method wherein the step of deriving the first information comprises the steps of: performing a look-up in a relational database; and making known the look-up result to at least one of the first client device and the second client device (see col. 4, lines 38-53).

Regarding claim 12 is the corresponding computer media claims of method claim 9. Therefore, claim 12 is rejected for the same reason shown above.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.



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Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

18. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Layson Jr. in view of Schwartz US 20020160790A1.

As to claim 7, Layson Jr. disclose everything claimed as explained above (see claim 1) except for the wireless communications network, wherein the wireless link is a CDPD and cellular packet data system. In an analogous art, the wireless communications network wherein the wireless link is a cellular CDPD (see par. 0037). It would have been obvious to one of the ordinary skill in the art at the time of the invention to implement the wireless data link of Layson Jr. according to the CDPD cellular packet data system standard, as suggested by Schwartz for the purpose of compatibility among handsets and systems.

19. Claims 73-75 rejected under 35 U.S.C. 103(a) as being unpatentable over Layson Jr. in view of Levac US005872926.

As to claim 73, Layson Jr. discloses everything as explained above (see claim1) except for the communication network further comprising a non-standard communications protocol for communications over the wireless link, for wireless communications between the server computer and the first client device; wherein the server computer must intermediate the communications between the first client device and the second client device because of the non- standard

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communications protocol. In an analogous art, Levac discloses the communication network further comprising a non-standard communications protocol for communications over the wireless link (see col. 4, lines 59-64), for wireless communications between the server computer and the first client device; wherein the server computer must intermediate the communications between the first client device and the second client device because of the non-standard communications protocol (see fig. 1, items 18a, 18b, 16, 24; col. 3, lines 1-35). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to use a protocol converter in the server for the simple purpose of compatibility (see col. 2, lines 31-35).

As to claim 74, Layson Jr. discloses the communication network wherein the first location and the second location, respectively, are each maintained by the server computer in confidence to the second client device and the first client device, respectively when one of the devices does not enter the dynamic safety parameter (see col. 16, lines 29-62).

As to claim 75, Layson Jr. and Levac disclose everything as explained above (see claim 74) except for the communication network wherein the first client device and the second client device communicate to the other first location and the second location, respectively, only if instructed to do so by the first client device and the second client device. However, OFFICIAL NOTICE IS TAKEN THAT asking permission to the user for revealing the location of a client device is a common and well-known technique used for privacy. Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to

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ask first for permission before sharing the information for the simple purpose of security and privacy.

20. Claims 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drutman in view of Levac.

As to claim 76, Drutman discloses everything as explained above (see claim 9) except for the method further comprising the steps of: communicating over the wireless link, for wireless communications between the logical switch and the first client device, by a non-standard communications protocol; intermediating communications between the first client device and the second client device by the logical switch, because of the non-standard communications protocol. In an analogous art, Levac discloses the method further comprising the steps of: communicating over the wireless link, for wireless communications between the logical switch and the first client device, by a non-standard communications protocol (see col. 4, lines 59-64); intermediating communications between the first client device and the second client device by the logical switch, because of the non-standard communications protocol (see fig. 1, items 18a, 18b, 16, 24; col. 3, lines 1-35). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to use a protocol converter in the server for the simple purpose of compatibility (see col. 2, lines 31-35).

As to claim 77, Drutman discloses the communication network wherein the first location and the second location, respectively, are each maintained by the server computer in confidence to the second client device and the first client

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device, respectively when there is no match in the profiles (see col. 7, lines 32-52, 61-65).

As to claim 78, Drutman and Levac disclose everything as explained above (see claim 77) except for the communication network wherein the first client device and the second client device communicate to the other first location and the second location, respectively, only if instructed to do so by the first client device and the second client device. However, OFFICIAL NOTICE IS TAKEN THAT asking permission to the user for revealing the location of a client device is a common and well-known technique used for privacy. Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to ask first for permission before sharing the information for the simple purpose of security and privacy.

21. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Layson Jr. in view of Drutman.

As to claim 4, Layson Jr. discloses the communications network wherein the first client device communicates an indicator of the first location to the server computer over the wireless link (see col. 6, lines 30-31, 44-47; col. 16, lines 29-62). In an analogous art, Drutman discloses a relator, operable in conjunction with receipt of the first identifier by the server computer, for correlating the first identifier particularly to the first client device, for selecting whether the server computer will intermediate communications between the first device and the second device, to-enable communications between the first device at the first location communicatively connected over the wireless link to the server computer

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and the second device at the second location communicatively connected to the server computer (see col. 6, line 60 – col. 7, lines 5, 32 – col. 8, line 20).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to combine these teachings to select if the information is going to be sent directly to other mobile station or through the server.

### ***Conclusion***

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any response to this Office Action should be mailed to:

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571-273-8300

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Hand delivered responses should be brought to:

Customer Service Window  
Randolph Building  
401 Dulany Street  
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcos L. Torres whose telephone number is 571-272-7926. The examiner can normally be reached on 8:00am-6:00 PM alt. Wednesday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-252-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Marcos L Torres  
Examiner  
Art Unit 2617

*Mit*  
Mit

*George Eng*  
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SUPERVISORY PATENT EXAMINER